



**STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD**

DIVISION OF WATER RIGHTS

RIGHT TO DIVERT AND USE WATER

APPLICATION T032842

TEMPORARY PERMIT 21385

Right Holders:

City of Huron
36311 South Lassen Avenue
Huron, CA 93234

Arroyo Pasajero Mutual Water Company
c/o Joseph D. Hughes, Esq.
Klein, DeNatale, Goldner, LLP
4550 California Avenue, Second Floor
Bakersfield, CA 93309

The State Water Resources Control Board (State Water Board) authorizes the diversion and use of water by the Permittee in accordance with the limitations and conditions herein **SUBJECT TO PRIOR RIGHTS**. The priority of this temporary permit dates from **July 14, 2017**. This right is issued in accordance with the State Water Board delegation of authority to the Executive Director (Resolution 2012-0029) and redelegation of authority to act upon applications for temporary permits by the Executive Director to the Deputy Director for Water Rights, dated October 19, 2017.

Application for Temporary Permit

The City of Huron (City) and the Arroyo Pasajero Mutual Water Company (APMWC) (Applicants or Permittee) filed Application T032842 on July 14, 2017, to appropriate water by temporary permit pursuant to Water Code section 1425 et seq. The Applicants propose to divert up to 13,513 acre-feet (af), at a maximum rate of 40.2 cubic feet per second (cfs), from the West Side Detention Basin (WSDB) to underground storage in the Westside Subbasin for later municipal and irrigation use. Diversions are proposed from November 1, 2017 through April 30, 2018, and infiltration would occur within up to 504 acres of agricultural fields owned by members of the APMWC and approximately 34 acres of percolation ponds owned by the City. Water stored underground would be extracted at 16 existing wells for municipal use within the City boundaries and irrigation use on up to 5,657 acres of field crops and pistachio orchards owned by members of the APMWC. The stored water is expected to be put to use during the 2018 irrigation season.

Arroyo Pasajero terminates at the WSDB along the western embankment of the San Luis Canal, a segment of the California Aqueduct. The WSDB, owned by the U.S Bureau of Reclamation (USBR) and managed by the California Department of Water Resources (DWR), is designed to store floodwater and sediment west of the San Luis Canal. During winter flows, water from Arroyo Pasajero builds up against the San Luis Canal in the WSDB and overflows onto adjacent private property; during large rain events, the overflow from the WSDB can flood two main roads, Lassen and Gale Avenues. Temporary pumps and unburied aluminum pipe will be placed at three locations within the WSDB, and water will be pumped from the WSDB to 34 acres of percolation ponds owned by the City and up to 504 acres of agricultural land adjacent to the WSDB. The two pumps directing water to agricultural fields (Points of Diversion [PODs] 1 & 2) would each divert at a maximum rate of 20 cfs, and the pump directing water to the City's percolation ponds (POD 3) would divert at a maximum rate of 100 gallons per minute (0.2 cfs). On the agricultural land, small, temporary berms would be plowed up to retain water on the fields for infiltration. Only previously disturbed land would be affected.

Diversion to underground storage would be measured by flow meters at the PODs. Beneficial use would be measured by flow meters installed at the recovery wells. The landowners of the 5,657 acres already extract groundwater for irrigation, and the project would not expand the number of acres of land under cultivation. According to the Applicants, the City receives water from the Central Valley Project (CVP) for municipal use, but during the drought the City proposed an emergency action to augment limited supplies by purchasing water from nearby agricultural wells, including one of the production wells identified in the temporary permit application. The Applicants expect all of the water stored under the temporary permit to be put to beneficial use during the following irrigation season. In the next two to three years, the City plans to construct a new municipal well to provide a back-up source of water when CVP deliveries are insufficient for the City's needs.

Application T032842 was noticed on September 6, 2017 and no objections were received; however, the State Water Board has ongoing authority to adjust the terms and conditions of a temporary permit in light of new information.

California Environmental Quality Act

Ordinarily, the State Water Board must comply with any applicable requirements of the California Environmental Quality Act (CEQA) prior to issuance of a temporary permit pursuant to Water Code section 1425 et seq. However, on April 6, 2017, Governor Edmund G. Brown Jr. issued Executive Order B-39-17. Item 3 of the Executive Order suspends CEQA for purposes of carrying out the directives in the order, including the issuance of temporary permits to capture high runoff events for local storage or recharge. Item 14 of the Executive Order requires the State Water Board to prioritize temporary water right permits to accelerate approvals for projects that enhance the ability of a local or state agency to capture high runoff events for local storage or recharge, consistent with water rights priorities and protections for fish and wildlife. The CEQA suspension applies to any actions taken by state agencies, and for any necessary permits or approvals required to complete these actions.

The City filed a Notice of Exemption (NOE) for the project on November 13, 2017. The State Water Board has reviewed the information submitted by the City and has made an independent finding that the proposed project is consistent with the suspension of CEQA in Executive Order B-39-17. The State Water Board will issue an NOE for the proposed project within five days of issuance of the temporary permit.

Requirements of Water Code section 1425

Before making the findings required by Water Code section 1425, the State Water Board must: a) review available records, files, and decisions which relate to the availability of water from the source at the proposed PODs to serve the proposed temporary diversion and use, and which relate to the rights of downstream users; and b) consult with representatives of the Department of Fish and Wildlife (CDFW). (Wat. Code, § 1427.) Division staff has reviewed available records, files and decisions relating to the availability of water for the project and the rights of downstream users. Staff estimates diversion of 13,513 af from the WSDB could have been fulfilled from November 1 through April 30 in 18 out of the past 84 years, based on streamflow data at the upstream Los Gatos Creek gage, which is maintained by the California Department of Water Resources and located seven miles upstream of the WSDB.

Division staff also consulted with representatives from CDFW starting July 25, 2017. CDFW staff noted verbally that the Applicants would need to file a Lake or Streambed Alteration Notification with CDFW for the diversion. (Fish & Game Code §1602.) CDFW staff also transmitted a letter on November 22, 2017, expressing concerns with possible impacts to burrowing owl (*Athene cunicularia*), a California Species of Special Concern, federally endangered and state-threatened San Joaquin kit fox (*Vulpes macrotis mutica*), and nesting state-threatened Swainson's hawk (*Buteo swainsoni*). Berming and inundation activities may collapse or disturb San Joaquin kit fox dens and burrowing owl burrows and cause adult burrowing owls to abandon nests, and ground-disturbing activities during the nesting season near Swainson's hawk nests may lead to nest failure. According to CDFW staff, Swainson's hawk in the Central Valley may nest as early as February 1. Executive Order B-39-17

specifically applies to projects consistent with protections for fish and wildlife. To ensure the State Water Board's approval is consistent with Executive Order B-39-17, terms have been included requiring pre-construction surveys and avoidance measures to protect these special-status species.

The State Water Board finds that, subject to the terms and conditions included in this temporary permit: (1) the Applicant has an urgent need for the proposed diversion and use of water; (2) the water may be diverted and used without injury to any lawful user of water; (3) the water may be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and (4) the proposed diversion and use is in the public interest. (Wat. Code, § 1425, subd. (b).) The State Water Board has also complied with its independent obligation to consider the effects of the proposed project on public trust resources and to protect these resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346, 658 P.2d 709].)

This temporary permit does not create a vested right, even of a temporary nature. (Wat. Code, § 1430.) This temporary permit is not precedential to future permitting actions for this or other similar projects.

The Applicants Have an Urgent Need for the Water

The State Water Board finds that the Applicants have an urgent need for the water proposed to be diverted and used. The Westside Subbasin is located within the San Joaquin Basin and has been designated a high-priority basin by DWR due to its irrigated acreage, reliance on groundwater in the basin, and the potential for undesirable results caused by ongoing overdraft. DWR also considers the sub-basin to be in critical overdraft, meaning continuation of present water management practices would probably result in significant adverse overdraft-related environmental, social, or economic impacts. Pursuant to the Governor's Executive Order B-40-17, the January 17, 2014 Drought State of Emergency is still in place for Fresno County. An urgent need for the requested temporary permit exists here to increase the yield of available water supplies and enhance water reliability for municipal and agricultural uses during drought conditions.

Water Code section 1425, subdivision (c), also provides that an "urgent need" exists when the Board, in its judgment, concludes that the proposed temporary diversion and use is necessary to further the constitutional policy that water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water will be prevented. Flows in the Arroyo Pasajero have a large seasonal and annual variability, and are not currently captured for beneficial use above incidental natural recharge to the aquifer. The diversion of these flows furthers the policy of capturing and putting this water to beneficial use.

The Water May Be Diverted and Used Without Injury to Any Lawful User of Water

Per the State Water Board's eWRIMS database, no senior surface water users are located at the WSDB, where the Arroyo Pasajero terminates. Consequently, no surface water users would be injured by the diversion.

In the absence of the project, some natural groundwater recharge would occur in the WSDB; however, according to the Applicants, soil pores at the bottom of the WSDB are sealed with silt that is conveyed with the water from the Arroyo Pasajero watershed. Based on data from within the WSDB in March and April 2001, March 2010, and April 2011, the Applicants estimate infiltration rates in the WSDB range from 0.10 to 0.15 feet per day. Unlike the WSDB, the agricultural fields are regularly tilled and ripped as part of normal agricultural practices, which improves infiltration. Based on anecdotal irrigation information for the agricultural land proposed to be inundated under the temporary permit, the Applicants believe infiltration rates for the agricultural fields range from 0.35 to 0.45 feet per day. The City's estimate for the infiltration rate in the City's percolation ponds, 0.009 feet per day, is lower than estimated rates for the WSDB, but the percolation ponds only make up approximately six percent of the total acreage of proposed infiltration areas. Moreover, the Applicants believe the method used to develop the estimate may not have been appropriate for determining daily infiltration rates under inundated conditions, and Applicants propose the infiltration rate may be substantially higher because the soil characteristics in the ponds are similar in nature to the soil of the nearby agricultural fields. Consequently, the Applicants believe the

infiltration rate in the ponds to be in the range of 0.35 to 0.45 feet per day. Because the project is expected to increase recharge to the aquifer above background levels, and because the water diverted under the temporary permit would not be used to expand existing agricultural water use in the area, the water can be diverted and used without injuring other lawful users of groundwater.

The Water May Be Diverted and Used Without Unreasonable Effects upon Fish, Wildlife, or Other Instream Beneficial Uses

The Arroyo Pasajero is an intermittent stream that terminates at the WSDB, and is not known to support fish, recreation, or other instream beneficial uses. CDFW staff did not communicate concerns related to aquatic or aquatic-dependent species. Aside from temporary placement of three pumps and associated above-ground piping and diversion of water, the project does not involve changes to the WSDB or removal of any riparian vegetation. Records from CDFW's California Natural Diversity Database indicate western spadefoot toad (*Spea hammondi*), a candidate species under the federal Endangered Species Act, may be present in the WSDB. Western spadefoot are almost completely terrestrial, but do enter water to breed in temporary pools and drainages formed by winter and spring rains. Although the project would involve diversion of water from the WSDB, the size of the WSDB and heterogeneity of surfaces within it, apparent from aerial photographs, makes it unlikely diversion of water at three points in the southern portion of the WSDB would substantially affect the availability of temporary pools used by western spadefoot toad during the breeding season (January to May). From river stage data at the southern border of the WSDB, water levels in the southern portion of the WSDB vary drastically year to year, suggesting species in the WSDB are adapted to substantial variability in water levels.

The Proposed Diversion and Use is in the Public Interest

The proposed diversion, storage, and use of water are in the public interest. Capture and storage of flows that would otherwise be unused will mitigate effects of the recent drought on water supplies for agriculture, businesses, communities, and fish and wildlife. Augmentation of groundwater supplies will enhance local drought resilience, particularly in a basin in critical overdraft. The California Natural Resource Agency's California Water Action Plan, originally released in 2014 and updated in 2016, calls for increased regional self-reliance and integrated water management, including conjunctive use of groundwater and surface water supplies.

The proposed diversion represents a pilot project that could help demonstrate the feasibility of projects that use available winter precipitation events to recharge local aquifers. In a wet year, the project may also help relieve nearby flooding caused by overflow from the WSDB. The project may provide the basis for a standard permit application by the Applicants to divert water from winter precipitation events to underground storage for use within the proposed places of use.

The Central Valley Regional Water Quality Control Board (Regional Board) expressed concerns on past projects with the groundwater quality impacts of inundating agricultural fields outside of the irrigation season for groundwater recharge. Terms are included in this permit to protect against adverse impacts to groundwater quality by requiring that lands used for infiltration be in compliance with the Regional Board's Irrigated Lands Regulatory Program or be managed under management practices for fertilizer application.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water: **Arroyo Pasajero**

within the County of **Fresno**.
2. Locations of points of diversion to underground storage and infiltration areas.

By California Coordinate System of 1983 in Zone 4	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
<u>Temporary Pump 1</u> North 1,956,297 feet and East 6,249,741 feet	NW ¼ of NE ¼	18	20S	18E	MD
<u>Temporary Pump 2</u> North 1,952,228 feet and East 6,249,738 feet	NW ¼ of SE ¼	18	20S	18E	MD
<u>Temporary Pump 3</u> North 1,961,709 feet and East 6,246,553 feet	SE ¼ of SE ¼	1	20S	18E	MD
<u>Infiltration Areas</u>	504 acres of existing agricultural fields and 34 acres of existing percolation ponds, as shown on map filed with the State Water Board.				

3. Purpose of use	4. Place of use					
	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian	Acres
Irrigation	Up to 5,657 acres within the Arroyo Pasajero Mutual Water Company service area boundary as shown on map filed with the State Water Board.					
Municipal	Within the city limits of the City of Huron as shown on map on file with the State Water Board.					

The place of use is shown on map number 2 of 2, dated July 14, 2017, filed with the State Water Board, and map submitted August 28, 2017, on file with the State Water Board.

5. The water appropriated shall be limited to the quantity of water which can be beneficially used and shall not exceed **13,513 acre-feet** by diversion from the West Side Detention Basin to underground storage, to be collected from the date of issuance of this temporary permit to April 30, 2018. The maximum rate of diversion from the West Side Detention Basin to underground storage shall not exceed **40.2 cubic-feet per second**. The amount of water that may be extracted from storage under this permit shall not exceed the volume of water diverted less any evaporative loss that occurs after diversion but prior to infiltration. This permit expires **180 days** from the date of its issuance, but may be renewed by the State Water Board.

(0000005C, 0000005J, 0510700)

6. No water shall be diverted under this temporary permit unless the Permittee monitors and records the rate of diversion and quantity of water diverted to underground storage and total amount placed to beneficial use under this temporary permit. Permittee shall use a measuring device or other method satisfactory to the Deputy Director for Water Rights. The device or method shall be capable of quantifying the hourly rate and volume of diversion and volume of diversion and shall be properly maintained.

Permittee shall maintain a daily record of the volume of water diverted and the maximum daily rate of water diverted. If Permittee is using any of the points of diversion under other rights, the record of diversion shall be separately quantified. Permittee shall also record the total quantity of water placed to beneficial use. A copy of the records shall be submitted with the report required by Term 0100500 or whenever requested by the Division of Water Rights.

The issuance of this water right does not affect the applicability of measuring and monitoring requirements of California Code of Regulations, title 23, chapters 2.7 and 2.8. If there is any conflict or inconsistency between conditions in this right for measurement, monitoring, and reporting of water use, and applicable regulations, the more stringent requirement or requirements shall control in each instances.

(0109999)

7. Permittee shall submit a report to the State Water Board within 60 days after the expiration of this permit. The report shall include the total quantity of water diverted under this temporary permit and any other amounts diverted from the point of diversion under other bases of right during the reporting period, the quantity of water applied to beneficial use, and a map of the location and acreage of fields used for infiltration. The report shall also include daily records of the volume and the maximum rate of water diverted under this temporary permit.

(0100500)

8. No water stored under this temporary permit shall be extracted for beneficial use other than municipal use by the City of Huron, until the Arroyo Pasajero Mutual Water Company has developed bylaws, an operating agreement, or other formal agreements for accounting for use of the stored water by its members. Permittee shall submit a copy of such bylaws or agreements, as necessary to confirm beneficial use of water stored under this temporary permit, with the report required by Term 0100500.

(0510301)

9. If Permittee intends to store water diverted under this temporary permit beyond September 30, 2018, Permittee must submit a plan to the Deputy Director prior to the expiration of this permit detailing how Permittee will calculate the expected losses of the stored amount over time, including timelines for any field or modeling investigations that will be conducted.

(0490800)

10. Prior to ground-disturbing activities conducted for diversion or storage of water under this permit, a qualified biologist shall conduct pre-construction surveys for San Joaquin kit fox (*Vulpes macrotis mutica*) and burrowing owl (*Athene cunicularia*) according to standard protocols in the area to be affected by ground-disturbing activities. Pre-construction surveys for San Joaquin kit fox shall be conducted 14 to 30 days prior to ground disturbance.

If burrowing owl burrows are identified, Permittee shall establish buffers around the burrows within which no ground-disturbing or inundation activities may occur unless a qualified biologist, approved by the California Department of Fish and Wildlife, verifies through non-invasive methods that either the birds have not begun egg-laying and incubation, or that juveniles from the occupied burrows are foraging independently and are capable of independent survival. Buffers shall be consistent with the California

Department of Fish and Wildlife's 2012 Staff Report on Burrowing Owl Mitigation. If San Joaquin kit fox dens are identified, Permittee shall consult with the California Department of Fish and Wildlife to determine if avoidance is feasible or if an incidental take permit is necessary.

Permittee shall submit the results of the pre-construction surveys to the Deputy Director of Water Rights and the California Department of Fish and Wildlife within ten days of completion of the surveys. In the event burrows or dens are identified, Permittee shall document compliance with this term in the report required by Term 0100500 or whenever requested by the Division of Water Rights.

(0400505)

11. No more than 10 days prior to ground-disturbing activities for diversion or storage of water under this permit conducted after February 1, a qualified biologist shall conduct a pre-construction nesting survey for Swainson's hawk (*Buteo swainsoni*) according to standard protocols in the area to be affected by the ground-disturbing activities. If any Swainson's hawk nests are identified, Permittee shall establish 0.5-mile buffers around the nests within which no ground-disturbing or inundation activities may occur until September 15 or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. If implementation of a 0.5-mile buffer is not feasible, Permittee shall consult with the California Department of Fish and Wildlife to develop alternative avoidance measures.

Permittee shall submit the results of any pre-construction survey to the Deputy Director of Water Rights and the California Department of Fish and Wildlife within ten days of completion of the survey. In the event nests are identified and buffers established around the burrows, Permittee shall document compliance with this term in the report required by Term 0100500 or whenever requested by the Division of Water Rights.

(0400506)

12. No agricultural field shall be inundated for infiltration under this temporary permit unless:
 - a) the field has been in compliance with the Irrigated Lands Regulatory Program for, at minimum, the two most recent growing seasons; or
 - b) the following apply:
 - i. the field has been operated under management practices for fertilizer application for at least two growing seasons; and
 - ii. the field has not had fertilizer applied within the last three months.

Permittee shall document compliance with this term. A copy of the documentation shall be submitted with the report required by Term 0100500 or whenever requested by the Division of Water Rights.

(0400501)

13. No water shall be applied to dairy land application areas for infiltration under this temporary permit.

(0390501)

14. The Permittee must cease diversions at the direction of the Deputy Director for Water Rights. The Deputy Director will direct the Permittee to cease diversions upon a finding that the diversion threatens to injure downstream senior right holders, or the diversion creates a threat to human health and safety.
(0359999)
15. Water applied for infiltration outside of the Permittee's infiltration basins shall only be applied to previously irrigated and developed agricultural fields not being used for crop production at the time of application.
(0400500)
16. The State Water Board may supervise diversion and use of water under this temporary permit for the protection of lawful users of water and instream beneficial uses and for compliance with permit conditions. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms of this temporary permit.
(0480600)
17. This temporary permit is issued and Permittee takes it subject to California Water Code, Division 2, Chapter 6.5, section 1425 et seq. Any temporary permit issued under this chapter shall not result in creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation at the discretion of the State Water Board.
(0510800)
18. Issuance of this temporary permit shall not be construed as indicating State Water Board approval of water right permits requested under other applications.
(0510999)
19. Permittee shall promptly submit any reports, data, or other information that may reasonably be required by the State Water Board, including but not limited to documentation of water diversion and documentation of compliance with the terms and conditions of this temporary permit.
(0000010)
20. No water shall be diverted or used under this temporary permit unless Permittee has obtained and is in compliance with all necessary permits or other approvals required by other agencies.
(0000203)
21. This temporary permit does not authorize any act which results in the taking of a candidate, threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C. § 1531 et seq.). If a "take" will result from any act authorized under this temporary permit, Permittee shall obtain any required authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this right.
(0000014)

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

Erik Ekdahl, Deputy Director
Division of Water Rights

Dated: December 1, 2017